

Changes to legislation: Housing (Scotland) Act 1987, SCHEDULE 9 is up to date with all changes known to be in force on or before 03 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 9

Sections 109(5), 131(2), 164(4).

RECOVERY OF EXPENSES BY CHARGING ORDER

Modifications etc. (not altering text)

C1 Sch. 9 applied (27.8.1993) by 1993 c. 11, ss. 62(2)(a)(ii), 68(2).

- 1 —Where under sections 108(3), 131(2) and 164(4) a local authority have themselves incurred expenses in relation to a house or building, they may make in favour of themselves an order (in this Schedule referred to as a “charging order”) providing and declaring that the house or building is thereby charged and burdened with an annuity to pay the amount of the expenses.
- 2 —The annuity charged shall be such sum not exceeding such sum as may be prescribed, as the local authority may determine for every £100 of the said amount and so in proportion for any less sum^{F1}....

Textual Amendments

F1 Words in Sch. 9 para. 2 repealed (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), ss. 92(1)(a), 104(3); S.S.I. 2015/122, art. 2

- [^{F2}2A The local authority must—
- (a) determine—
 - (i) the term of the charging order, being no fewer than 5 years and no more than 30 years, and
 - (ii) the date in each year on which the annuity is payable, and
 - (b) notify the owner of its determination under paragraph (a).

Textual Amendments

F2 Sch. 9 paras. 2A, 2B inserted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), ss. 92(1)(b), 104(3); S.S.I. 2015/122, art. 2

- 2B Section 187 of the Housing (Scotland) Act 2006 (asp 1) applies to a notification under paragraph 2A(b) as if the notification were a formal communication referred to in section 187(1) of that Act.]

Textual Amendments

F2 Sch. 9 paras. 2A, 2B inserted (1.4.2015) by Housing (Scotland) Act 2014 (asp 14), ss. 92(1)(b), 104(3); S.S.I. 2015/122, art. 2

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3 —A charging order shall be in such form as may be prescribed and shall be recorded in the General Register of Sasines, or registered in the Land Register, as the case may be.

[^{F3}3A A charging order must provide—

- (a) that the annuity is payable for the term and on the date in each year determined under paragraph 2A(a),
- (b) that in default of payment of an annuity, the annuity is to be separately recoverable as a debt, and
- (c) that if immediately after the final annuity falls due any balance of the expenses charged by the order remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.

Textual Amendments

F3 Sch. 9 paras. 3A, 3B inserted (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), ss. **92(1)(c)**, 104(3); S.S.I. 2015/122, art. 2

3B (1) A person aggrieved by a determination under paragraph 2A(a)(i), may appeal to the sheriff.

(2) On an appeal under this paragraph the sheriff may make such order relating to the term of the charging order as the sheriff thinks fit.

(3) The decision of the sheriff on appeal under this paragraph is final.]

Textual Amendments

F3 Sch. 9 paras. 3A, 3B inserted (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), ss. **92(1)(c)**, 104(3); S.S.I. 2015/122, art. 2

4 —Every annuity constituting a charge by a charging order duly recorded in the General Register of Sasines or registered in the Land Register, as the case may be, shall be a charge on the premises specified in the order and shall have priority over—

- (a) all future burdens and incumbrances on the same premises, and
- (b) all existing burdens and incumbrances thereon except—
 - ^{F4}(i)
 - (ii) any charges created or arising under any provision of the Public Health (Scotland) Act 1897 or any Act amending that Act, or any local Act authorising a charge for recovery of expenses incurred by a local authority, or under this Schedule; and
 - (iii) any charge created under any Act authorising advances of public money.

Textual Amendments

F4 Sch. 9 para. 4(b)(i) repealed (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), ss. **92(1)(d)**, 104(3); S.S.I. 2015/122, art. 2

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- 5 —A charging order duly recorded in the General Register of Sasines or registered in the Land Register, as the case may be, shall be conclusive evidence that the charge specified therein has been duly created in respect of the premises specified in the order.
- [^{F5}5A The owner of the premises on which an annuity has been charged by a charging order does not, by virtue only of ceasing to be such an owner, cease to be liable for each annuity charged.]

Textual Amendments

- F5** Sch. 9 para. 5A inserted (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 92(1)(e)**, 104(3); S.S.I. 2015/122, art. 2

^{F6}

Textual Amendments

- F6** Sch. 9 para. 6 repealed (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 92(1)(f)**, 104(3); S.S.I. 2015/122, art. 2

- 7 —A charging order and all sums payable thereunder may be from time to time transferred in like manner as a [^{F7}standard] security and sums payable thereunder.

Textual Amendments

- F7** Word in Sch. 9 para. 7 substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), **ss. 71, 77(2)**, **sch. 12 para. 48(15)** (with **ss. 58, 62, 75**); S.S.I. 2003/456, art. 2

- 8 —Any owner of, or other person interested in, premises on which an annuity has been charged by any such charging order shall at any time be at liberty to redeem the annuity on payment to the local authority or other person entitled thereto of such sum as may be agreed upon or, in default of agreement, determined by the Secretary of State.

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Changes and effects yet to be applied to :

- [Sch. 9 para. 1 words substituted by 2006 asp 1 Sch. 6 para. 15](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- [s. 21\(3\)\(i\)s. 21\(3\)\(ai\)\(ii\) by 2001 asp 10 Sch. 10 para. 13\(3\)\(c\)para. 13\(D\)-\(iii\)](#)
- [s. 24\(3\)\(f\) and word\(s\) inserted by 2003 asp 10 s. 5\(1\) \(This amendment not applied to legislation.gov.uk. S. 5 omitted \(31.12.2012\) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13\)](#)
- [s. 31\(2C\)\(c\) words substituted by 2004 asp 8 Sch. 4 para. 2](#)
- [s. 61\(2\)\(a\)\(ia\) by 2001 asp 10 Sch. 10 para. 13\(6\)\(a\)\(ii\)](#)
- [s. 63\(1A\)-\(61C\) by 2001 asp 10 s. 46\(2\)](#)
- [s. 66\(1\)\(vi\)\(vii\) by 2001 asp 10 Sch. 10 para. 13\(9\)\(b\)](#)
- [s. 286\(a\)\(c\) by 2001 asp 10 Sch. 10 para. 13\(40\)\(a\)\(b\)](#)